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REPORTS

NOTES OF THE WEEK

Salary of a Stipendiary

The Yorkshire Post reports that there was strong objection in the finance committee of the Hull corporation to a proposal that the salary of the stipendiary magistrate should be increased from £2,250 to £3,150. The chairman said that they had to look at the proposed increase against a background of the general economic situation. Manual workers who had asked for an increase of 4*d.* an hour had been given one of 2½*d.* an hour. An increase of £900 a year would be much more than any total amount that any particular manual worker would be receiving. He also said that the suggested new salary for the stipendiary magistrate, with due regard to the qualifications he must hold, would be considerably in excess of the city treasurer, the city engineer, the city architect and the chief education officer.

The comparison with manual workers is not very helpful, especially in the absence of information about any previous increases in wages they have received since the stipendiary magistrates' salary was fixed. Comparison with corporation officials is natural enough, but in our own opinion a better comparison is with other judicial and quasi-judicial appointments.

It is sometimes suggested that stipendiary magistrates do not work very hard, because they sit, in most instances, three or four days a week, compared with five or six days, sometimes with long hours, worked by other public officials. This is hardly fair to the magistrates. A stipendiary magistrate has to work under conditions quite different from those of most officials and professional men. He may have to hear cases in great variety concerning the lives and liberties of parties who are often unrepresented, and the effect of his decisions may be vital to others besides the parties. The concentration and sense of responsibility required of him impose considerable strain and if he sits for four busy days he has done about as much as he ought to be expected to do in a week, apart from exceptional circumstances necessitating still greater demands upon his time.

What ought to be done about the salary at Hull is a matter upon which we offer no opinion. All we wish to point out is that comparisons are difficult because of the very nature of the work.

"Larceny and Claim of Right"

Our note of the week at p. 322, *ante*, has been followed by an interesting letter from Mr. G. S. Wilkinson, clerk to the Dudley justices, who writes:

"Your Jamaican who purported to justify his taking of £2 from another man by claim of "greater need" might have cited Sir Matthew Hale in his defence. Hale once directed a jury to acquit a lad cast upon the shores of Cornwall who in the extremity of his hunger opened a window, took a loaf and began to eat it. Apparently, Hale, however, did not say in his writings that necessity would generally be a defence (*see Roscoe's Criminal Evidence*, 16th edn., p. 1,000)."

The question of necessity as an excuse for crime is dealt with in 9 *Halsbury* (2nd edn.) p. 24. "Necessity, in the sense of compulsion arising from hunger or imminent danger to a person's own life or property, is no excuse for crime." Cases cited include *R.* v. *Dudley and Stephens* (1884) 14 Q.B.D. 273, which was an extreme case of murder arising out of a shipwreck. The Jamaican, living in a welfare state, had no need to fear starvation, and his need was only comparative. In the days of Sir Matthew Hale there was indeed a Poor Law, but it could hardly have met the immediate necessity of the lad cast upon the shores of Cornwall.

Sir Matthew Hale

Mr. Wilkinson's letter prompted a return to that fascinating book *Fourteen English Judges* by the first Earl of Birkenhead. Lord Birkenhead places Hale in the highest rank as advocate, writer and Judge, and records that he was always compassionate, and was one of the first Judges who in his attitude to prisoners allowed the claims of humanity. In a reference to what may well be the case of the lad cast up in Cornwall, Lord Birkenhead says: "It is said that on one occasion he persuaded a jury to

acquit a man who had stolen bread to save himself from starving. Later on when reproving a Sheriff for his overlavish entertainment, he was astonished to hear that his host was the starving man, who was seeking to show his gratitude. Shortly after his acquittal he had succeeded unexpectedly to a great inheritance and had thereby attained his present office."

Let us hope that this delightful story of a happy ending is true.

Manslaughter or Murder

Section 2 of the Homicide Act, 1957, which came into operation last March, provides that a person shall not be convicted of murder if he was suffering from such abnormality of mind as substantially to impair his mental responsibility. The abnormality may arise from (*a*) arrested or retarded development ; (*b*) inherent causes ; or (*c*) disease or injury. There can then only be a conviction for manslaughter. For the first time the law has thus recognized the defence of diminished responsibility in criminal cases and the matter is of special interest to psychiatrists who may be called for the defence. The *Lancet* has drawn attention to two recent cases in which a defence has been raised under this section. In the first case, which was at Leeds Assizes (*The Times,* April 27, 1957) a coloured woman was charged with the murder of a child aged 17 months. While the parents were at the cinema she had been looking after the child who was later found dead with a belt tied round her neck. On medical evidence the woman was found guilty of manslaughter, but in a case at Newcastle Assizes (*The Times,* May 17, 1957) the plea was unsuccessful. A man was charged with the murder of a widow who was an unlicensed money lender. The psychiatrist called for the defence said he was an inadequate psychopath but the senior medical officer of Durham prison took an opposite view. He said the man had an intelligence quotient of 112. The psychiatrist, in cross-examination, said there were variations in the type of psychopathy but not in degree. Psychopathy was an abnormality to personality which could be regarded as an abnormality of mind and could impair mental responsibility. He agreed that if a man were rightly said to be a psychopath the only remaining question would be whether the abnormality of mind could substantially impair his mental responsibility for the act in question. But he would expect a psychopath to show remorse. The defendant in this case did not, unless giving himself up to the police was a sign of remorse.

The Judge told the jury that the provision in s. 2 had not been put into the Act as a sort of option. The jury returned a verdict of capital murder.

The Purpose of Halt Signs

The halt sign which requires a vehicle in a minor road to stop when it reaches a major road before emerging on to that road is a valuable aid to road safety provided that it is obeyed in the spirit as well as in the letter.

The *East Anglian Daily Times* of May 29, 1957, reports a case in which the prosecution alleged that a motorist halted, but did not halt for long enough. He was charged with driving without reasonable consideration, and it was said that, having halted, he came slowly out on to the main road too soon so that a vehicle travelling along that road was unable to avoid a collision. The defendant is reported to have said that he let two cars pass and then, seeing nothing else coming, he moved off at about four miles an hour and that the other car "came at him out of the blue." He claimed that a van parked near the junction must have obscured his view of the car with which his car came into collision.

The whole point of the halt sign is to ensure that a driver on the minor road stops and does not move off until it is safe to do so without putting a driver who is travelling along the main road into peril of a collision.

Unfortunately some road junctions have such bad visibility that the vehicle on the minor road has to trespass on to the major road before being able to see what, if anything, is approaching along the major road. Also, as was alleged in the case referred to above, a parked vehicle on the major road can add appreciably to the difficulties of the driver emerging from the minor road. In many instances the person who so parks his vehicle on a major road may be in danger of being prosecuted under s. 50 of the Road Traffic Act, 1930, for leaving the vehicle in such a position as to be likely to cause danger to other persons using the road, but the police have so many other necessary duties to perform that they have little time to give to checking a practice such as this. Quite frequently a driver who so leaves his vehicle does not realize that it is a potential source of danger, but the responsibility is on anyone who leaves a vehicle on the public highway to ensure that it does not cause danger to other road users and it is no answer to say that he did not realize that it would cause danger. Occasionally the police keep special watch on halt signs to see that they are duly observed. We suggest that when they do so they keep an equal watch on any vehicle which may be left in such a position as to add to the difficulties of the minor road driver.

Court-house and Clinic

The difference of opinion between magistrates and a committee of the Berkshire county council about the proposal to make use of part of a new court-house at Didcot at times as a dental clinic has produced a number of arguments on each side, and we are not going to offer any opinion generally on a question about which local people know much more than we do. One argument against the proposed user does, however, strike us as not well-founded. It is suggested that a child who has visited the building for the purpose of the dental clinic, and who afterwards has to attend the same building when called upon to attend the court, will not have the feelings of fear and respect for the law which he ought to have.

We should have thought that most children, and grown-ups for that matter, feel anything but light-hearted about visits to the dentist, and attending a juvenile court held in the building in which there is also a dental clinic would in no way detract from the seriousness of the occasion. The fact that a juvenile court is held in a building used in part for purposes other than those of a court need not give rise to lack of respect for the law or the court on the part of juveniles or adults. Some juvenile courts are held in buildings ordinarily used for purposes quite unconnected with courts, some of them being used for club, church or settlement purposes. The court loses none of its dignity on that account.

Unroadworthy pedal cycles

Those who drive motor vehicles on the roads are responsible for seeing that those vehicles are constructed in accordance with the appropriate regulations and are maintained in good working order so that they are not, because of lack of proper construction or maintenance, a potential source of danger to other road users. An unroadworthy pedal cycle can also be a potential source of danger. The Brakes on Pedal Cycles Regulations, 1954, require such cycles to be fitted with adequate brakes,

and it is an offence against s. 20 of the Road Traffic Act, 1934, to carry more than one person on a pedal bicycle if it is not constructed or adapted for the carriage of more than one person, but there are no other regulations or provisions requiring a bicycle to be maintained in a roadworthy condition.

We are interested to read in *The Western Morning News* of May 18, 1957, that at a meeting of the South-West of England Accident Prevention Federation of the Royal Society for the Prevention of Accidents, a resolution was passed urging that it be made an offence to ride an unroadworthy bicycle on a highway and that parents should be held responsible for the condition of their children's machines. Another resolution was passed which asked that consideration be given to requiring that all pedal cycles should be fitted with a bell or other instrument for giving audible warning of approach. Regulations for this latter purpose could be made by the Minister of Transport and Civil Aviation by virtue of s. 29 of the Road Traffic Act, 1930, as amended. No doubt these matters will be brought to the notice of the appropriate authorities and duly considered. There are obvious reasons for saying that they merit consideration, much as further additions to the already long list of requirements and prohibitions are to be deplored.

Shot By Mistake

Professor Kenny in his *Outlines of Criminal Law,* explained that a reasonable mistake of fact may be a good defence provided that if the facts had been as the accused supposed them to be he would have been free from guilt. He added that it seemed that to establish a defence of mistake of fact the accused must show that on the facts as he supposed them to be he did not have the *mens rea* requisite for the offence in question.

In *R.* v. *Foster* (the *Liverpool Daily Post,* May 22nd) at the Cumberland Assizes, the accused, who pleaded not guilty to maliciously wounding a boy, was not put to the proof, as the prosecution decided to offer no evidence. Learned counsel referred to a decision of the Court of Criminal Appeal which had influenced him in deciding so to deal with the matter. This case was no doubt *R.* v. *Cunningham* (*The Times,* May 21 and May 28.

Hinchcliffe, J., said this was a case where the accused man, Foster, from a motor car shot at what he thought to be a pheasant and most unhappily shot a little boy. He, the learned Judge, said he supposed that what induced counsel to think it right that no evidence should be offered was that it would not be possible to say that that shot was fired maliciously, having regard to the recent case. Apart from that it would have been difficult to see how the case would be put, having regard to the need for proving that the wounding was malicious.

By direction of the learned Judge, the jury returned a verdict of not guilty.

Malice

In *R.* v. *Cunningham, supra,* the appellant had been convicted at Assizes of an offence against s. 23 of the Offences Against the Person Act, 1861. He had pleaded guilty to another indictment which charged him with stealing a gas meter and contents, but did not appeal against the sentence. In the course of delivering the judgment of the Court of Criminal Appeal, Byrne, J., said that the appellant had gone to the cellar of an empty house, wrenched the gas meter from the gas pipes and stolen it, together with its contents. Though there was a stop tap within 2 *ft.* of the meter, he did not turn off the gas with the result that a very considerable volume of gas escaped, some of which seeped through the wall and partially asphyxiated a woman, so that her life was endangered. This was clearly an unlawful act by the appellant, and the real question was whether it was malicious within the meaning of s. 23 of the Act of 1861.

The learned Judge went on to cite with approval a principle propounded by the late Professor C. S. Kenny in his *Outlines of Criminal Law* and repeated in the recent edition by Professor J. W. Cecil Turner: " In any statutory definition of a crime; malice must be taken not in the old vague sense of 'wickedness' in general, but as requiring either (1) an actual intention to do the particular kind of harm that in fact was done, or (2) recklessness as to whether such harm should occur or not (*i.e.*, the accused has foreseen that the particular kind of harm might be done, and yet has gone on to take the risk of it). It is neither limited to, nor does it indeed require, any ill-will towards the person injured." The trial Judge had in effect told the jury that if they were satisfied that the appellant acted wickedly—and he clearly acted wickedly in stealing the gas meter, and its contents—they ought to find that he had acted maliciously in causing the gas to be taken by the woman so as to endanger her life. In the view of the Court it should have been left to the jury to decide whether even if the appellant did not intend the injury to the woman, he foresaw that the removal of the gas meter might cause injury to someone, but nevertheless removed it.

The appeal was allowed and the conviction quashed.

Magistrates Abroad

Magistrates and others concerned with the administration of justice in other countries, whether within the Commonwealth or not, are always made welcome in this country, partly, it must be admitted, because we are rather proud of our courts and institutions and our system of justice. We are no doubt right in thinking that our system is better for us than any other that obtains elsewhere, although that does not mean that it could be transplanted successfully in all other parts of the world. We can certainly learn something from the experience and wisdom of other nations, and a study of their courts and their penal systems can give us new ideas and help in improving some of our own institutions, and so enterprising people with receptive minds go abroad and see things for themselves.

The Magistrates' Association has organized a visit by 50 of its members to Belgium and the Netherlands, the first under the auspices of the association, and by the time this note appears it will have taken place. Members are paying their own expenses. Visits will have been made to courts, open prisons and other institutions in both countries. We believe the exchange of visits of this kind is productive of good and enriches the knowledge of both hosts and guests.

It is hoped that the result of this first experiment may be that further visits to other countries will be undertaken. Travel widens the mind, and we have no doubt that the discussions that take place, not only those formally arranged but also those conversations which go on between individuals or small groups, will be found hardly less useful than the visits to courts and institutions. Thought stimulates thought, and as Lord Haldane once said, " ideas have hands and feet."

BINDING OVER—COMPETENCY OF SPOUSES

However unfortunate it may be, it not infrequently happens that a wife desires to take proceedings in the magistrates' court with a view to getting her husband bound over to be of good behaviour and keep the peace. This usually arises on some alleged conduct by the husband towards her, *e.g.*, threats to injure, falling short of a criminal offence. The question arises whether in such proceedings the wife is a competent witness against her husband; similarly whether the husband is a competent witness against his wife in proceedings where he is the complaining party against her.

CRIMINAL OR CIVIL

As a general rule, at common law the husband or wife of a defendant is not a competent witness against the defendant in criminal proceedings, with the exception that a wife is a competent witness against her husband in respect of an act of bodily injury or violence upon her and a husband is a competent witness against his wife in cases of injury to him. The Criminal Evidence Act, 1898, which applies to all criminal proceedings, made the husband or wife of a person charged with an offence mentioned in the schedule to the Act a competent witness for the prosecution and statutory exceptions to the common law rule have been made from time to time: *see Archbold*, 33rd edn., p. 496, *et seq*. By the Evidence Act, 1851, and the Evidence Amendment Act, 1853, in civil cases, husband and wife are both competent and compellable. Before those Acts they were not competent. The answer to the question under consideration, therefore, appears to depend on whether proceedings for binding over are by their nature criminal or civil. First thoughts would seem to indicate that they are civil, the commencement of proceedings being by complaint for an order by virtue of the Magistrates' Courts Act, 1952, s. 91. The making of a complaint to a justice of the peace and the issue of a summons to appear to answer it is authorized by s. 43 which is the first section in part II of the Act headed "Civil Jurisdiction and Procedure." However, in a Practical Point at 114 J.P.N. 320, the opinion is expressed that a husband (and, therefore, a wife) is not competent, the proceedings being considered to be quasi-criminal, failure to obey the order is dealt with by imprisonment and though a precautionary rather than a preventive measure, the order to enter into recognizances has always been made by courts exercising criminal jurisdiction.

HIGH COURT DECISIONS

So far, there is something to be said for either view and we wondered what guidance could be obtained from the decisions of the High Court which, from time to time, has had to consider whether particular proceedings are criminal or civil. In *Cattell* v. *Iveson* (1858) 22 J.P. 672, Campbell, C.J., explained the distinction as follows: "The test is whether it is sought to recover a sum of money in the nature of a debt (civil proceedings) or to inflict punishment of an exemplary or public nature (criminal proceedings)." In *Re Clifford & O'Sullivan* [1921] 2 A.C. 570, Lord Cave said, "In order that a matter may be a criminal cause or matter, it must, I think, fulfil two conditions which are connoted by and implied in the word 'criminal'. It must involve the consideration of some charge of crime, that is to say, of an offence against the public law; and that charge must have been preferred or be about to be preferred before some court or judicial tribunal having or claiming jurisdiction to impose punishment for the offence or alleged offence. If these conditions are fulfilled, the matter may be criminal, even though it is held that no crime has been committed, or that the tribunal has no jurisdiction to deal with it . . . but there must be at least a charge of crime (in the wide sense of the word) and a claim to criminal jurisdiction." In *Parker* v. *Green* (1862) 25 J.P. 247, Crompton, J., said, "Wherever a party aggrieved is suing for a penalty, where the proceeding can be treated as the suit of the party—as, for instance, an application for an order in bastardy—the proceeding is a civil one, and the defendant is a competent witness. But when a proceeding is treated by a statute as imposing a penalty for an offence against the public, the amount of which penalty is to be meted out by the justices according to the magnitude of the offence, there can be no doubt that the proceeding is a criminal one." In *A. G.* v. *Radloff* (1854) 10 Exch. 84, Platt, B., defined them as follows: "It seems to me that the true test is this, if the subject-matter be of a personal character, that is, if either money or goods are sought to be recovered by means of the proceeding—that is a civil proceeding; but, if the proceeding is one which may affect the defendant at once, by the imprisonment of his body, in the event of a verdict of guilty, so that he is liable as a public offender—that I consider a criminal proceeding." In the House of Lords in *Amand* v. *Home Secretary & Minister of Defence of Royal Netherlands Government* [1943] A.C. 147, Lord Wright summed up the result of the authorities in these words: "The principle which I deduce from the authorities I have cited and the other relevant authorities which I have considered, is that if the cause or matter is one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a criminal cause or matter."

Far from clarifying the position, these extracts from the judgments in the cases quoted, succeed only in confusing the issue still further. On the one hand it can be asserted that a complaint for binding over does not allege a crime for which there can be a conviction and for which punishment can be imposed. On the other hand, the proceedings are hardly a suit for the recovery of a sum of money or of goods and the allegations on which the complaint is based can fairly be described as of a public nature. Any order made immediately affects the liberty of the subject and, as the Practical Point referred to points out, is made by a criminal court.

THREAT TO MURDER

In *R.* v. *Yeo* [1951] 1 All E.R. 864; 115 J.P. 264, Gorman, J., ruled that the evidence of a wife was not admissible on a charge against her husband under the Offences against the Person Act, 1861, s. 16 of maliciously sending to her knowing the contents thereof a letter or writing threatening to murder her. The learned Judge ruled that the wife could not be called as a witness under s. 4 of the Criminal Evidence Act, 1898, *supra*, because s. 16 of the Act of 1861 was not an enactment mentioned in the schedule to the 1898 Act, nor was she a competent witness at common law as in a case where the husband was indicted for personal injury, for there was no authority for saying that a threat to murder was a "personal injury" to the wife. As we intimated above, a complaint for binding over could allege threats and, if the proceedings can be considered as civil proceedings, the wife

would be a competent witness (in spite of the ruling in *R.* v. *Yeo,* albeit a criminal case) in a case involving possible immediate imprisonment.

DOUBT

It will be seen that no satisfactory answer can be given to the question under consideration and in the absence of any authority specifically making the wife or husband competent (and we have been unable to find one) we believe the common law rule should prevail and they should not be considered competent in this type of proceeding.

STATE ADVENTURE MONEY

By D. E. P. GILES

Nearly 23,000 people holding Premium Bonds, will receive prizes this month, when the first drawing is made by "Ernie." The importance of this Government measure to promote thrift and to cure inflation, is now underlined by the Labour Party's proposal to introduce a State superannuation scheme in addition to National Insurance. One of its objects is the promotion of compulsory saving to cure inflation.

To this generation, prizes dependent upon chance in a State enterprize are a novelty. For several hundred years, however, from the time of Elizabeth I, State lotteries were an integral part of the national finance.

In the reign of Elizabeth, when the improvement of harbours was a necessary part of the development of sea power, the Queen dared not lay heavy taxes on her rebellious subjects for this purpose, but she did ask them to adventure their money.

"A verie rich lotterie Generall" was held, "contayning a great number of good prices, as wel of ready money as of plate gilte, and certain sortes of marchaundizes." The first prize was to be £3,000 in ready money, £700 in plate, and the rest in good "tapissarie meete for hangings and other covertures, and certain sortes of good linen cloth," a total prize of £5,000. There were three "Wellcomes" of money and plate to the first three "Adventures" drawn.

As a result of an intensive campaign, a number of boroughs, towns, and villages were persuaded to venture. A feature of the lottery was the posie, a poetical effusion which each subscriber submitted.

"Topsham is buylded upon a red rydge
I pray God sende a good lot to maintayne the kay and bridge"

"Draw Brighthemston a good lot,
Or else return them a turbot"

were typical examples of the posies sent from all parts of the country.

The drawing lasted 16 weeks and continued day and night.

Raleigh had taken possession of Virginia, and its colonization would create a permanent market for English goods, but this was at first hindered by a lack of financial resources. In 1609, the land was granted by the Company of Adventurers and Planters of the City of London for the first colony, the necessary finance to be gained by public lotteries. "The chiefe prize" in the First Great Virginian Standing Lottery in 1612, was £4,000 in "fayre plate." A lottery house was set up at the West end of St. Paul's Church, the builder recouping himself by the sale of tickets. The income from this lottery was £8,000. The Second Great Virginia Standing Lottery was held in 1615, which was also known as the "Five Shillings Lottery," since this sum was the price of one chance.

These modest attempts of the English to establish colonies in America were viewed somewhat contemptuously by the Spaniards. The Spanish ambassador to England wrote in cipher to the King of Spain, "They have established a lottery from which they will obtain sixty thousand ducats, and by this means they will despatch six ships with as many people as they can get by such pretexts." These lotteries, however, helped to build the foundation of what was to be an immense commerce with America.

As the various trading companies grew in wealth and influence, so did London develop, and the water supply became one of the problems of growth. During the reign of Charles I, one proposal was made for a new river to London and Westminster from Hoddesdon in Hertfordshire. Eighteen thousand pounds was raised by lottery in 1635[1], and this was so successful that a further lottery was launched[2]. The House of Lords ordered that £10,000 of the total money should be paid to Sir Cornelius Vermuyden for draining the Fens[3]. Thus was a new rich province 80 miles long added to the farmland of England. The waterworks project was then shelved. In 1660, however, Sir Edward Ford, who had constructed a great engine for raising Thames water and delivering it to the higher streets, obtained from Charles II, licence to erect further waterworks. By letters patent he was granted full power to set forth and publish one or more lottery[4] or lotteries to provide the great sums of money which must be laid out.

A national policy designed to promote increased production for the domestic and foreign markets, influenced the formation of the Council of the Royal Fishing of Great Britain and Ireland. Charles II, in his proclamation of 1661[5], observed "the great plenty of fish with which the waters abound, and what an ease it would be to the kingdom to have lazy and idle people set to work and trained up in the trade of fishing," and appointed many notable people to the Council. To finance this project, the Royal Fishing Lottery was held. Samuel Pepys, who was one of the 36 commissioners, wrote in 1664, "I discoursed about the business of improving the lottery to the King's benefit, and that of the Fishery."

Britain's part in the Grand Alliance, against France, taxed the revenue severely, and it became necessary to negotiate a considerable loan in the form of a lottery. The prizes were annuities. The war with France brought with it the malt tax, and additional duties on spirits, wine, tobacco, and other articles.

The "Million" Lottery in 1694[6], used the duties levied on salt, beer, ale and other liquors for securing recompences to such persons advancing the money towards carrying on the "warr" against France. It returned £2,200,000 spread over 16 years for a £1,000,000 advance providing from the point of view of the subscriber a most excellent investment, both "Fortunate" and "Unfortunate" adventurers receiving benefits. There were 2,500 "Fortunate" tickets varying from £100 yearly, to £10. Even the "Unfortunate" received an annuity of £1. The least return was greater than the cost of the ticket.

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[1] S.P. (Dom.), Chas. 1, vol. ccxcviii, No. 10.
[2] S.P., Docquet, vol. 18, No. 6.
[3] J. H. L. vol. iv, p. 260.
[4] Pat. R. 2937, No. 21.
[5] Proclamation, Brit. Mus. C. 21, f. 1 (24).
[6] 5 & 6 Will. & Mary, c. 7, Rep. except s. 59, S.L.R. 1867.

This lottery was very successful, and was only the beginning of the annuity lotteries. The next one on these lines in 1710[7], raised an annual fund for 32 years, with duties raised upon coals and houses having 20 windows or more. One million, five hundred thousand pounds was raised by this lottery, and here again the least return was greater than the cost of the ticket.

Four " Malt " lotteries were held in 1721[8], 1722[9], 1723[10], and 1724[11], the duties on malt, mum, cyder, and perry, being appropriated for payment of monies due on lottery certificates, and the principal money or part of it was repayable almost immediately, the blanks sometime bearing interest.

Then followed the South Sea Company Lottery Annuities[12], where the annuity comprised South Sea stock.

With the bursting of the South Sea bubble, in 1720, Joint Stock Methods had suffered a setback, but they lived down that discredit.

Seventeen Joint Stock Lottery Annuities[13-29] were held between 1731 and 1768, where in some cases duties were appropriated for the payment of the annuity prizes. In the lottery of 1726[13], a fund of £30,000 derived from deductions charged on the Civil List revenues was the security for the annuities. In other lotteries the Sinking Fund was charged with the payment of the annuities.

With the year 1769, although the annuity system was not entirely abandoned, the lotteries became simple gambles, a case of hit or miss, albeit the chances of failing entirely were small, there seldom being more than four blanks to a prize. In 55 years (1769–1823) there were held no fewer than 126 State Lotteries. These lotteries of the 18th and 19th century were held at a time of ever growing prosperity for the nation. So great had been the increase in the public wealth that the return from the Excise amounted at the death of George I to nearly £2,000,000. Later in the century the war with America had added £100,000,000 to the national debt, but the burden was hardly felt, so great was the increase in commerce.

Public works were still paid for by lottery.

The noble and beautiful edifice immortalized by Wordsworth in his sonnet " Westminster Bridge," was built with the proceeds of four lotteries. In 1737,[30], £625,000 was raised with tickets at £5, and 30,616 prizes were given, the chief premium being £20,000. Four[31-34] others followed, 15 *per cent.* of the money being spent on the bridge for the benefit of the nation.

[7] 8 Ann., c. 10; c. 4, Ruffhead, etc., Rep. S.L.R. 1867.
[8] 7 Geo. I, st. 1, c. 20; Rep. S.L.R. 1867.
[9] 8 Geo. I, c. 2; Rep. Except ss. 36-7, S.L.R. 1867.
[10] 9 Geo. I, c. 3; Rep. S.L.R. 1867.
[11] 10 Geo. I, c. 2; Rep. S.L.R. 1867.
[12] 24 Geo. II, c. 2; Rep. S.L.R. 1870.
[13] 12 Geo. I, c. 2.; Rep. (except s. 1.) S.L.R. 1870.
[14] 4 Geo. II, c. 9. ,, ,,
[15] 16 Geo. II, c. 13. ,, ,,
[16] 17 Geo. II, c. 18. ,, ,,
[17] 18 Geo. II, c. 9. ,, ,,
[18] 19 Geo. II, c. 12. ,, ,,
[19] 20 Geo. II, c. 10. ,, ,,
[20] 21 Geo. II, c. 2. ,, ,,
[21] 28 Geo. II, c. 15. ,, ,,
[22] 29 Geo. II, c. 7. ,, ,,
[23] 31 Geo. II, c. 22. ,, ,,
[24] 32 Geo. II, c. 10. ,, ,,
[25] 1 Geo. III, c. 7. ,, ,,
[26] 3 Geo. III, c. 12. ,, ,,
[27] 6 Geo. III, c. 39. ,, ,,
[28] 7 Geo. III, c. 24. ,, ,,
[29] 8 Geo. III, c. 31. ,, ,,
[30] 9 Geo. II, c. 29; Rep. 16 & 17 Vict., c. 46.
[31] 10 Geo. II, c. 16. ,, ,,
[32] 12 Geo. II, c. 33. ,, ,,
[33] 13 Geo. II, c. 16. ,, ,,
[34] 14 Geo. II, c. 40. ,, ,,

Our national heritage, the British Museum, storehouse of priceless treasures in art and history, might not have existed for the public save through a lottery. A sum of £300,000 was raised in 1753[35], to buy the museum or collection of Sir Hans Sloane, the Cottonian Library, and the Haleian collection of manuscripts. A special clause in the Museum Lottery was to the effect that buying and selling of tickets was to cease entirely two days before the draw commenced, in an attempt to prevent cornering and profiteering in tickets. Daniel Defoe was said to have bitterly attacked the Duke stockjobbers.

Charities also benefited, and the provision of Greenwich Hospital[36] and Leicester Workhouse in 1699[37], were only the forerunners of the hospitals provided by the Irish Sweepstakes.

Influential people petitioned Parliament for private lotteries.

When the diamond valued at £30,000 left by the Hon. George Pigot remained unsold, a lottery was drawn in 1801[38], with tickets at £2 2*s*. This diamond was ultimately sold to the grandfather of William Pitt.

The Adams brothers, who left their mark on 18th century London, fell into financial difficulties when they had erected the beautiful buildings in the Adelphi, and failed to sell them. A lottery[39] was sanctioned with tickets at £50 each, the prizes of property ranging from £50,000 to £10.

Side by side with these excellent lotteries, there were unfortunately many swindling projects undertaken by unprincipled adventurers, which gave rise to most of the objections to lotteries.

At first, however, the main reasons for prohibitive ordinances were to clear the way for state monopoly, the Exchequer very soon realizing the possibilities of the lottery as a revenue producing machine. A second and later cause of hostility was due to the undoubted evils arising from abuses of the system. The chances of winning were heavily loaded against the public in unauthorized lotteries. A varied collection of gambling devices, introduced mainly by alien adventurers, and operating in a welter of corruption and double dealing, had been the cause of ill-feeling and litigation.

A Committee of Ways and Means examined the problem in 1809, and considered the cumulative evidence from the reign of Charles II, in addition to the existing abuses. One of the later complaints concerned the organization of small private lotteries called " Little Goes." Ignorant people who patronized this gamble usually chose the small numbers as easier to remember, and promotors put few numbers below 100 into the draw, and in this way made large profits. In the legitimate gambles the tickets were seldom below £10, and quite beyond the purses of most people. The brokers divided the tickets and charged handsomely for this service. Poor people impoverished themselves by buying tickets or parts of tickets, relying on the advice of fortune tellers, who themselves reaped a rich harvest. In the days of unbridled corruption in high places, influence was employed by wealthy dealers to effect a corner. Another side-line of the business was the sale of chances and insurance or the waging on chance of a ticket winning.

In 1692–3 a Lotteries Prohibition Bill[40] was drafted with the intention of abolishing lotteries. The Bill recited that by unlawful lotteries, evil disposed persons had unjustly and fraudulently obtained great sums of money from children, servants, etc., to the utter ruin and impoverishment of many; that the Royal Oak[41] was more mischievous than the rest, having occasioned

[35] 26 Geo. II, c. 22, ss. 22-47; Rep. S.L.R. 1867.
[36] J.H.C., vol. xii, p. 657.
[37] J.H.C., vol. xii, p. 657.
[38] J.H.C., vol. v, p. 208.
[39] J.H.C., vol. xxxiv, pp. 335, 339, 361.
[40] J.H.C., vol. x, p. 773.
[41] Enrolled Pat. R., c. 66, 3297, No. 15.

many riots and murders, and declared that all grants, patents and licences were against law. The threat of suppression, carrying no hint of compensation to Crown licences, raised consternation among those who had grants, and others whose sole subsistence consisted of annuities charged upon the fees received from such farmers, and several petitions were presented to Parliament. Some hidden influence was sufficient to delay the progress of the Bill, and it did not appear upon the Statute Book till five years later. So many reports of the knavery of private lottery promotors and the losses of persons ill able to bear them had been made that legislators bethought themselves of the draft Act which had been shelved in 1693. The Bill passed the Commons on April 27, 1699[42], and was agreed by the Lords without amendment. Between then and 1836, eight further Acts[43-50] were passed, directed against foreign and private lotteries.

Although the benefit to the Government during the entire run of State Lotteries (1694–1826), was probably not less than £35,000,000, the odium attached to private and swindling lotteries had affected public opinion regarding all lotteries and the last State lottery was held in 1826. That Parliament gave way to the objectors, and sacrificed a fruitful source of income was perhaps, to a good extent, due to the people becoming more and more used to direct taxation.

[42] 10 Will. III, c. 23, s. 2.
[43] 9 Ann., c. 6.
[44] 8 Geo. I, c. 2.
[45] 9 Geo. I, c. 19.
[46] 6 Geo. II, c. 35.
[47] 12 Geo. II, c. 28.
[48] 42 Geo. III, c. 119, s. 2.
[49] 4 Geo. IV, c. 60, s. 37.
[50] 6 & 7 Will. IV, c. 66.

The report from the Select Committee on Premium Bonds dated 1918, stated *inter alia* that in France, Premium Bonds had for a long time been a very popular form of investment, and had been used largely to finance municipal, local and even State schemes. It was then estimated that the Premium Bonds in existence in France amounted to £400,000,000, and that there was apparently no prejudice against them. On the contrary they were held to promote thrift.

The figures given in 1955, show that this form of investment has increased enormously in France.

Any criticisms of the desirability of issuing Premium Bonds made by the Select Committee in 1918, are now dwarfed by the importance of combating inflation.

It is perhaps significant that state lotteries were most successful when the progress of the nation was greatest. The enormous development in industry, and the increase in trade and commerce inspired the nation with a spirit of adventure which was reflected in financial investments dictated by chance.

That this spirit is still part of the national character is shown by the figures spent on football pools and on dog racing. In 1955–56 this sum reached the enormous figure of £28,206,514, and only a small proportion of the public benefited.

The nation is now geared to development and enterprise, and it seems that history may well repeat itself in national saving.

Acknowledgments: Details of the lotteries named above are given in *Lotteries and Sweepstakes*, by C. L'Estrange Ewen, published by Heath Cranton, Ltd., and references are made in a few instances in Clifford's *History of Private Bill Legislation*, vol. II, published by Butterworths.

YORICK

We have been consulted upon a matter of mixed law and practice, which lies beneath the surface of many a burial ground, but in our experience is not often brought to light. A funeral took place in a parish churchyard ; there was no regular grave digger, and the undertaker had the grave dug by his men. The same men acted as bearers ; a burial service was conducted by the incumbent ; after which he and the mourners went away. So did the bearers, the grave being left open and unattended for a time—which attracted notice before it was filled in. Upon complaint, the undertaker stated that his men had to go away and change from their formal dress as bearers into working clothes, before this work was done. We were not told how long the time was, before the men returned. From the fact of complaint, we suspect that they had gone to their dinner—longer, at any rate, than would be necessary for men who had a motor vehicle at their disposal to go and change their clothes.

Be this as it may, the matter came to us in the form of a problem which has some general interest: what are the rights and duties of persons burying a body in a parish churchyard, or other ground in respect of which burial an express contract has not been made for the manual labour involved ? This sort of question arose in some places during the war, because of the shortage of man-power, but in ordinary times seems to settle itself, and there is little express authority upon it. This may be partly because the tendency is for burials to take place in ground provided for the purpose by some public authority (a non-ecclesiastical authority), which has resources for securing labour. However this may be, we will consider the case of burials in an ordinary parish churchyard, where questions are (perhaps) more likely to arise in the future than in old days. We will not go into complications which might arise elsewhere.

Relatives or executors have a right to bury a body in the parish churchyard of the parish where the person dies. The parish sexton, if one has been appointed, has a legal right to dig the grave and take a fee for doing so. Otherwise, it is in our opinion open to the persons arranging the funeral to have the grave dug by whom they please—normally, no doubt, there is a grave digger attached to the church (not necessarily holding the ecclesiastical office of sexton) and this man is employed as a matter of course.

Where there is no regular grave digger, the persons arranging the funeral will have to dig the grave themselves, or to bring somebody to do so. In other words, the plot of land is made available by the church, but the church is not bound to provide labour. We have been informed of a parish where the churchyard is kept in order by a woman, who is not able to dig graves.

The reason for complaint, that after the interment the men left the grave open, was presumably that if the relatives had remained (we imagine they had gone home) they might have been distressed at the apparent indifference of the men ; some idea of propriety was no doubt the gravamen of the matter. Complaint would have been avoided if the undertaker had left one man in charge, so as to prevent unauthorized access while the coffin was exposed, or had placed boards across the grave while the men were away, so as to prevent rain or a stray dog from falling in, but so far as we know

there is no rule of law which obliges the persons in charge of a funeral (either the relatives, etc., or a paid undertaker) to fill in the grave immediately. The Church of England prayer book says that earth shall be cast upon the body by those standing by, so as to give the officiating minister his cue for the next words, but there is nothing about further filling in, and we think this is really a matter of practical convenience.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Jenkins, Romer and Sellers, L.JJ.)

TENNANT v. LONDON COUNTY COUNCIL

May 20, 21, 1957

Metropolis—Land—Notice to terminate business tenancy on behalf of London county council—"Signature"—Need of personal signature by landlord—Signature of official authorized by council in writing—Signature of authorized official written "per procurationem" by another official not so authorized—London Government Act, 1939 (2 *and* 3 *Geo.* 6, *c.* 40), *s.* 184 (1)—*Landlord and Tenant Act*, 1954 (2 *and* 3 *Eliz.* 2, *c.* 56), *s.* 25 (1)—*Landlord and Tenant* (*Notices*) *Regulations*, 1954 (*S.I.* 1954 *No.* 1107), *reg.* 4. *Appendix, Form* 7.

APPEAL from order of DANCKWERTS, J.

The London county council gave T a notice dated January 4, 1956, under s. 25 (1) of the Landlord and Tenant Act, 1954, to terminate his tenancy of certain business premises of which the council were landlords. The form of notice under s. 25 (1), which is prescribed by reg. 4 and appendix, form 7, of the Landlord and Tenant (Notices) Regulations, 1954, has at its foot "Signed . . . (Landlord)." The council's valuer, J. E. J. Toole, who was authorized in writing to sign such notices by the council's standing orders, authorized R. H. D., one of his assistants, to sign these notices for him. The notice in this case was signed by R. H. D. writing in the appropriate space "J. E. J. Toole, pp. R. H. D." In May, 1956, T applied by originating summons for a new tenancy under the Act of 1954, and subsequently an affidavit by the valuer revealed the above facts. In his affidavit in reply to this affidavit T claimed that, as R. H. D. did not have the written authority of the council to sign notices, the notice under s. 25 (1) was invalidated by s. 184 (1) of the London Government Act, 1939, which provides: "Any notice . . . which a local authority is authorized or required by or under any enactment . . . to give . . . may be signed on behalf of the authority by the clerk of the authority or by any other officer of the authority authorized by the authority in writing to sign documents of the particular kind . . . " In December, 1956, T issued a writ claiming a declaration that by reason of this defective signature the notice under s. 25 (1) of the Act of 1954 was invalid and had not terminated his tenancy.

Held: the notice was valid and effectively terminated the tenancy because: (i) the space in the prescribed form followed by the word "landlord" does not so require the personal signature of the landlord as to exclude the common law rule that a signature by an authorized agent is a good signature by the principal; (ii) the writing by R. H. D. was a good signature by J. E. J. Toole, the authorized agent of the council; (iii) s. 184 (1) was permissive, not imperative, and did not prevent the council from signing documents in ways other than those for which it provided.

Per curiam: It is important in landlord and tenant cases, where time may be an important consideration, that parties who wish to take objection to the form or the validity of proceedings should act promptly and not wait to raise objections of the kind raised here until the proceedings have been on foot for, perhaps, months. If necessary, the court would have been prepared to hold that the tenants in this case had waived any objection to the notice.

Counsel: *Tuck*, for the tenant; *Megarry, Q.C.*, and *Fletcher-Cooke* for the London county council.

Solicitors: *Attenboroughs; J. G. Barr.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Byrne, Slade, and Barry, JJ.)

R. v. CUNNINGHAM

May 20, 27, 1957

Criminal Law—Statutory malice—Maliciously causing noxious thing to be taken—Coal gas—Larceny of gas meter—Fracture of main during larceny—Seeping of gas to adjoining house—Occupant of adjoining house asphyxiated—Meaning of "maliciously"—Mere wickedness not sufficient—Offences Against the Person Act, 1861 (24 *and* 25 *Vict.*, *c.* 100), *s.* 23.

APPEAL against conviction.

The appellant pleaded Guilty at Leeds Assizes before OLIVER, J., to the larceny of a gas meter and was sentenced to six months' imprisonment. In respect of that matter he did not appeal. He was also convicted of unlawfully and maliciously causing to be taken by W a noxious thing, namely, coal gas, so as thereby to endanger the life of W, contrary to s. 23 of the Malicious Damage Act, 1861. On that charge he was sentenced to five years' imprisonment.

The appellant broke open a gas meter in a house, took it away, and stole its contents. In doing so he unknowingly fractured the gas main, and, although there was a stop tap within 2 *ft.* of the meter, he did not turn off the gas. As a result of the fracture of the main, coal gas seeped through the cellar wall to the house next door, and W, an occupant of the house, who was asleep in bed, inhaled a considerable amount of coal gas into her lungs, her life thereby being endangered. OLIVER, J., directed the jury that "'malicious' for this purpose means wicked—something which he has no business to do and perfectly well knows it."

Held: (i) that in any statutory definition of malice, the word must be taken, not in the old vague sense of wickedness in general, but as requiring either (*a*) an actual intention to do the particular kind of harm that in fact was done, or (*b*) recklessness as to whether such harm should occur or not, *i.e.*, the accused person must have foreseen that the particular kind of harm might be done and yet gone on to take the risk of it; malice was not limited to, nor did it require, any ill-will towards the person injured; (ii) there had been a misdirection in law by the Judge, and it should have been left to the jury to decide whether, even if the appellant did not intend the injury to W, he foresaw that the removal of the meter might cause injury to someone, but nevertheless removed it; and (iii) that the conviction must be quashed.

Counsel: *Brodie* for the appellant; *Snowden* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal;* town clerk, Bradford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Devlin, JJ.)

MELIAS, LTD. v. PRESTON & ANOTHER

May 14, 24, 1957

Food & Drugs—Pre-packed articles—Possession for sale otherwise than in quantity specified by statute—"Actual offender"—Manager of multiple grocers—Sale of Food (*Weights & Measures*) *Act*, 1926 (16 *and* 17 *Geo.* 5, *c.* 63), *s.* 4 (2), 12 (5).

CASE STATED by Leamington justices.

At Leamington magistrates' court three informations were preferred by the first respondent, Preston, an inspector of weights and measures, against the appellants, Melias, Ltd., a limited company owning shops in various localities, charging them with offences against s. 4 (2) of the Sale of Food (Weights & Measures) Act, 1926, as being in possession for sale of pre-packed articles of food not made up in one of the quantities specified in the subsection. The first two informations referred to packets of lard and peas respectively, which were alleged to be in the appellants' possession on October 3, 1956, and the third to a packet of butter alleged to be in their possession on October 18, 1956. The appellants took the necessary steps under s. 12 (5) of the Act to bring before the court the second respondent, Reynolds, who was the manager of their shop at Leamington, alleging that he was the "actual offender" and had committed the offence without any consent, connivance or wilful default on their part, and that, accordingly, they were exempted from penalties. On the dates mentioned in the informations the first respondent weighed the articles referred to and found certain deficiencies in the packets which he weighed. The packets of lard and peas had been weighed and prepared by the second respondent before he went on holiday, but when the first respondent visited the shop on October 3 he was absent on holiday. On October 18, when the packet of butter was weighed, the second respondent was present. He had not made up the packet, but admitted that it was his duty

to check the weight and he had failed to do so. The second respondent pleaded Guilty to the three informations. The justices were satisfied that the deficiencies were caused without any fault on the part of the appellants, but held that they were bound by the decision in *Walking Ltd.* v. *Robinson* (1930) 94 J.P. 73, to hold that the second respondent could not be held responsible as the actual offender. They, accordingly, decided that the appellants were liable to be convicted and were not exempt from penalties, and they dismissed the informations against the second respondent despite his pleas of Guilty. The appellants appealed.

Held: that "actual offender" in s. 12 (5) meant a servant of the employer whose physical act or default brought about the particular circumstances that constituted the offence; the second respondent, as manager for the appellants, was entrusted with the general management, and the lard and peas were always in his possession for sale (though for a period he was temporarily absent) and the butter was clearly in his possession. If the court in *Walking Ltd.* v. *Robinson* (*supra*) did intend to say that, because a person was the manager of a shop and an employee of a company, he could not be in possession of articles at the shop for sale, that *obiter dictum* ought not to be followed. The case, therefore, must be remitted to the justices with the direction that, while the conviction of the appellants must stand, they were exempt from penalties and they must convict the second respondent and impose the penalties on him.

Counsel: *Thompson, Q.C.* and *J. M. Davies*, for the appellants; *Wrightson* for the first respondent; *S. Bolton* for the second respondent.

Solicitors: *Arthur Taylor & Co.* for *Mace & Jones*, Liverpool; *Sharpe, Pritchard & Co.*, for *R. M. Willis*, Warwick; *Thompson, Quarrell & Megaw*, for *Blythe, Owen, George & Co.*, Leamington.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P. and Wallington, J.)

DAVIES *v.* DAVIES

May 2, 3, 1957

Husband and Wife — Maintenance — Concurrent jurisdiction — Refusal by justices to make order—Appeal to Divisional Court—Summary Jurisdiction (Married Women) Act, 1895 (58 *and* 59 *Vict., c.* 39), *s.* 10, *s.* 11.

APPEAL from justices.

By s. 10 of the Summary Jurisdiction (Married Women) Act, 1895, justices may refuse to make an order where "the matters in question between the parties or any of them would be more conveniently dealt with by the High Court" and in such a case there is no right of appeal against their decision.

The wife complained to the justices that the husband had deserted her three months before the date of the complaint, that he had been guilty of persistent cruelty towards her, and that he had wilfully neglected to provide reasonable maintenance for her and the child. The justices, however, refused to make an order, holding, under s. 10 of the Act of 1895, that the matters in question would be more conveniently dealt with by the High Court. The justices particularly had in mind the fact that, if they found any complaint proved, their powers respecting an order for custody of the child were limited compared with the powers of the High Court. The wife appealed. The husband contended that by virtue of s. 10 of the Act of 1895 the wife had no right to appeal against the justices' refusal to make an order.

Held: the wife had a right of appeal to the Divisional Court by virtue of s. 11 of the Act of 1895 since (i) the separation having lasted only three months, the question of desertion could not be the subject of a substantive charge in the High Court, (ii) on the facts the question of desertion was integrally bound up with the charges of cruelty and wilful neglect to maintain, and, accordingly, (iii) s. 10 did not apply since there was no concurrent jurisdiction between the High Court and the magistrates' court in respect of the wife's complaints.

Per curiam: Where in cases under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the justices cannot make an order for custody, *e.g.*, in favour of the husband or restraining the wife from taking the child out of the jurisdiction, they could refuse to make any order for custody and leave one or other of the parties to apply for an order for custody, *e.g.*, under the Guardianship of Infants Acts, 1895 to 1949.

Counsel: *Merrylees* for the wife; *Elson Rees* for the husband.

Solicitors: *Rhys Roberts & Co.* for *W. Davies & Jenkins*, Llanelly; *R. I. Lewis & Co.*, for *Leslie Williams*, Llanelly.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

SMITH *v.* SMITH

May 13, 1957

Justices — Probation officer — Domestic proceedings — Husband's statement to probation officer—Probation officer authorized to ask for adjournment on husband's behalf, but not to make admission of desertion.

APPEAL from justices.

The wife caused a summons to be issued against the husband on her complaint that he had deserted her. The husband attended court on the date of the hearing. He saw a probation officer, admitted to him that he had left the wife, and explained that he had an urgent job which required him to drive to a neighbouring town and could not wait for the case to be called on. He thereupon left the court building. The case was called on and the wife gave evidence. The probation officer then gave evidence to the effect that the husband could not appear that morning, but that he admitted the desertion and was prepared to pay £3 a week. The justices found the complaint proved and made an order for maintenance in the wife's favour. The husband appealed, and in support of his appeal filed an affidavit in which he denied that he had admitted to the probation officer that he had deserted the wife and set out facts which showed that there might be an answer to the charge of desertion.

Held: the probation officer was authorized to ask for an adjournment, but had exceeded his authority in considering himself an agent to make vital admissions on the merits of the case, and, therefore, the case would be remitted for a re-hearing.

Counsel: *H. Gore*, for the husband; *Beddington*, for the wife.

Solicitors: *Edward F. Iwi*, for *Julian S. Goldstone & Co.*, Manchester; *Gregory, Rowcliffe & Co.*, for *Taylor & Buckley*, Oldham.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

ADDITIONS TO COMMISSIONS

CAERNARVON COUNTY

Mrs. Delyth Clowes Vaughan Alban-Jones, Dolafon, Roumania Crescent, Llandudno.

Miss Eirlys Williams, Derlwyn, Betws-y-coed.

Richard Williams, Y Ddol, Pwllheli.

MISCELLANEOUS INFORMATION

ESTIMATED COUNTY EXPENDITURE, 1957–58

This useful return compiled and published by the Society of County Treasurers gives for each county in England and Wales an analysis of the rate precept for the current financial year and particulars of the estimated expenditure per head of population to be met from rates and government grants, as well as tables summarizing these figures.

An analysis of the frequency distribution of rate precepts shows that the greatest number of counties (20 out of 61) levy precepts between 14*s.* 1*d.* and 15*s.* Thirteen others are between 13*s.* 1*d.* and 14*s.* and 12 more in the next lowest range of 12*s.* 1*d.* to 13*s.* The remainder are equally divided above and below these classes. The county with the lowest precept is the West Riding of Yorkshire at 10*s.* 4*d.*, and the highest is Cambridge with 18*s.* 3*d.* Comparisons are made with the figures of the two previous financial years but, as the preface to the return points out, the base is different each year because of the effects of revaluation both at April 1, 1956, when the new lists came into operation; and a year later when other changes were made, notably the 20 *per cent.* reduction in the rateable values of commercial and other hereditaments.

In the light of the Government's proposals about block grants the figures showing the estimated expenditure per head of population are particularly interesting. They emphasize, for example, the dominant role of education: this service requires an expenditure of £12 13*s.* 1*d.* per head while all other services combined only need £7 6*s.* per head. It is not only these relationships in total which are important however; having regard to the Government's proposals the variations in costs between different authorities are of vital interest. These variations must be of great concern, for example, to some of the Welsh counties: compare these figures:

	Estimated Expenditure per Head on Education
	£ *s.* *d.*
Brecknock	17 8 6
Cardigan	17 10 10
Montgomery	19 1 5
Radnor	17 17 11
Devon	10 10 2
Hampshire	10 11 0
Rutland	9 17 3
East Sussex	10 15 10

Differences in expenditure of this order are due partly to deliberate acts of policy, for example reduction in the size of classes; and partly to basic differences such as density of population in relation to area (involving the maintenance of many relatively costly small rural schools), and differences in the number of children educated otherwise than at public expense.

Local authorities are anxious to learn the extent to which the Government is prepared to take account of factors of this kind in its block grant and equally concerned to know, even if the principle is conceded that allowances for such variations should be made, how in practice a formula can be devised within the framework of a block grant which will ensure justice to individual authorities.

COMMITTEE ON ADMINISTRATIVE TRIBUNALS

The Committee on Administrative Tribunals is facing many complexities but it does not seem from much of the evidence which the Committee has received that there is such outstanding criticism of the present procedure of administrative tribunals and inquiries as was thought to be the case when the Committee was established. One defect of the present arrangements to which attention has been drawn is that although an inspector conducting a planning inquiry has power to subpoena witnesses, in practice he seldom does so. It was pointed out by the Rural District Councils' Association in their evidence that where the views of certain authorities or persons are sought before the holding of the inquiry, no opportunity is given to the local authority, or the appellant to test the strength of such evidence by cross-examination. The Association urged, therefore, that an inspector holding an inquiry should be charged with bringing before him those authorities or persons who were consulted before the hearing such as when the Minister of Agriculture, Fisheries and Food has recommended the refusal of the development of agricultural land.

It is a very common complaint that the delay both before an inquiry and between the inquiry and the Minister's decision is inordinately long. Every effort should be made to minimize these delays. Another matter of which complaint has been made is in regard to the procedure at an inquiry. It is the present practice for the appellant to give his evidence first and to show cause why planning permission should be granted in his favour. The Association considers that it should be first the duty of the planning authority to justify its decision. This would indicate the nature of the opposition and enable the appellant to assess the matters with which he should deal in presenting his case. Further, the Association suggests, as others have done, that the report of the inspector should be available, on request, to the local authority or the appellant; and that when the decision of the Minister is contrary to the recommendations of the inspector he should be required to state his reasons.

CIVIC INSIGNIA FOR CARNFORTH

Carnforth (Lancashire) urban district council is one of the few local authorities in its area with no chain of office for its chairman, and when the late King George VI and the Queen visited the district in 1951, His Majesty asked why the chairman wore no insignia.

Recently at a special function at the Royal Station Hotel, Carnforth, Lord Peel ceremonially invested the present chairman, Councillor R. T. Barnard, with his council's first chain of office and badge for future civic occasions.

The chairman, who first joined the council in 1903 and has served continuously on it since 1919, received the M.B.E. in the Birthday Honours.

ROAD CASUALTIES, MARCH, 1957

Road casualty figures for March show that 357 persons were killed and 4,238 seriously injured. There were also 13,401 cases of slight injury, making a total for all casualties of 17,996.

Compared with March last year there were 43 fewer deaths, a decrease of over 10 *per cent.*, and 197 fewer serious injuries. The total for all casualties is down by 989, or just over five *per cent.*

The Road Research Laboratory estimate that motor traffic as a whole in March this year was 17.5 *per cent.* less than in March, 1956.

Although fewer pedestrians and motorists were killed or injured, there were more accidents to pedal and motor cyclists.

Forty-four children lost their lives, compared with 65 a year ago. The number seriously injured rose by 42 to 794.

In the first three months of the year casualties totalled 48,960, a decrease of 4,530, or 8.5 *per cent.*, on the same period of last year. Deaths numbered 1,053, a decrease of 85; and serious injury cases 11,613, a decrease of 661.

Other features of the casualty figures during this period of fuel restrictions were an increase of 698 in pedal cycle casualties, including 20 more deaths; and an increase of 856 in casualties to motor cyclists and passengers, including 43 more deaths. Particularly marked was the increase in casualties to child cyclists, which totalled 1,930, an increase of 410, or 27 *per cent.*

Casualties to motorists and passengers fell by 5,128 to 15,508, a decrease of almost one quarter.

FOOD STANDARDS COMMITTEE

The Minister of Agriculture, Fisheries and Food, with the agreement of the Minister of Health and the Secretary of State for Scotland, has appointed Dr. H. G. Smith, F.R.I.C., as the representative of the Department of the Government Chemist on the Food Standards Committee. He succeeds Dr. J. R. Nicholls, who has retired.

I.S.T.D. SUMMER SCHOOL

The 1957 Summer School of the Institute for the Study and Treatment of Delinquency will be held from Monday, June 24 to Sunday, June 30, at Attingham Park near Shrewsbury. The subject will be "Psychological Treatment of the Offender."

The programme is as follows:

Monday, June 24

Evening—Major-General The Viscount Bridgeman, K.B.E., C.B., D.S.O., M.C., Lord Lieutenant of Shropshire, hopes to perform the opening ceremony at 6 *p.m.*

The first lecture will be given after dinner: "The Concept of Treatment"—a general survey. Miss Gertrude Keir.

Tuesday, June 25
Morning—"Group Work with Adults." Dr. Maxwell Jones.
Evening—Film Show.
Wednesday, June 26
Morning—Introduction to the Visits (talks on the institutions to be visited during the week).
Evening—"Group Work with Children." Miss Ethel Perry.
Thursday, June 27
No morning lecture; particularly long expeditions will be arranged.
Evening—"Casework Treatment of the Environment." Miss Margaret Tilley.
Friday, June 28
Morning—"Institutional Psychotherapy." Dr. A. Hyatt Williams.
Evening—"Out-Patient Psychotherapy." Dr. L. H. Rubinstein.
Saturday, June 29
Morning—"The Psychopathology of Truancy." Dr. Augusta Bonnard.
Evening—"Residential Treatment of the Adolescent." (Boys) Mr. Otto Shaw; (Girls) Dr. W. H. Craike.
Sunday, June 30
Morning—"Treatment and the Offender"—the Community's Part. Dr. T. A. Ratcliffe.
Afternoon—Group Reports and Summing-up.
Booking forms and further details from the I.S.T.D., 8 Bourdon Street, London, W.1.

PERIOD FOR PUTTING PATENT APPLICATIONS IN ORDER

The Board of Trade have today laid before Parliament Rules under the Patents Act, 1957, laying down the period within which an application for a patent must be put in order for acceptance.

As was foreshadowed during the debates on the Act, the period laid down is three years six months from the date of filing the complete specification.

The Rules are the Patents (Amendment) Rules, 1957 (S.I. 1957 No. 618).

CENTRAL HEALTH SERVICES COUNCIL

The report of the Central Health Services Council for 1956 refers to various important matters which have been considered by the Council and its standing advisory committees. These include hospital supplies and the extension of joint contracting arrangements; the increase of poliomyletis vaccination; smoking and lung cancer, in which attention is drawn to the further statistical material available; and the control of dangerous drugs in hospitals. Special consideration was given by the Standing Mental Health Advisory Committee to the need for greater co-ordination of the functions of mental hospitals and local authorities. The recommendations made by the committee impinge on the recommendations of the Royal Commission on Mental Health, whose report has since been published. But it would be unfortunate if administrative action were not taken on some of the eminently sensible recommendations made by the Committee without waiting for prolonged consideration of the report of the Royal Commission. The committee consists of eminent medical men, with experience of various aspects of mental health, as well as some well informed laymen. The result of their exhaustive consideration of the material before them must have considerable weight. For instance, they had no difficulty in reaching the conclusion that closer co-ordination between the authorities concerned, and especially between individual workers, would achieve valuable results. There is nothing new in this view and it is surely time that action was taken. It also urged that the initial "sorting out" of new patients calls for co-operation between the personnel of the mental hospitals and clinics, the local health and welfare authorities, the general hospitals and the general practitioners. It is shown that all too often there is insufficient provision by the various authorities, but co-operation between them would render possible co-ordinated plans for the present and future. In referring to alternatives to mental hospital placement it is pointed out that one important reason for the pressure on mental hospital beds is the shortage of health visitors, district nurses, home helps and social workers. It is clear that if more domiciliary help of this nature, and closer co-operation with the general practitioners were available, many patients could be retained in the community. There has often been criticism of the certification of elderly persons and in this connexion it is noted in the report that mental symptoms displayed by such patients can frequently be alleviated by modern geriatric treatment.

On the provision of residential accommodation by local authorities under the National Assistance Act, it is pointed out that the deficiency has increased from 48,000 beds in 1948 to 70,000 now. Any reluctance to receive suitable persons in existing accommodation, including persons discharged from mental hospitals, will need to be overcome. The help which housing authorities can give is also considered. It is suggested that they might be invited to co-operate (i) In facilitating the discharge of elderly patients from hospital by providing suitable accommodation for relatives or others prepared to give them a home, and (ii) as a long-term policy, including in housing schemes provision for old people in the area in which their younger relatives have been re-housed. If this is not done the old people are deprived of the daily help and supervision of the relatives, which hitherto may have obviated resort to mental hospital care. It could also help if housing authorities relaxed their rules about sub-letting to lodgers. The report also refers to the need for making the community aware of the psychological problems arising from the increasing number of older persons who need help. On the need for continued co-operation between authorities it is suggested that the respective social workers should combine to provide all relevant information for use in the treatment of the patient. Finally, the committee emphasized that adequate meals are essential to prevent deterioration of some elderly persons in the community who neglect themselves. It is suggested that the work of voluntary bodies providing "meals on wheels" could be most usefully supplemented by the provision of meals at appropriately situated centres for ambulant persons. These would have the added advantage of ensuring moderate daily walking exercise for the elderly, many of whom are prone to avoid leaving their house, and of providing the stimulus of social intercourse with others.

NORTH WALES PROBATION REPORT

The number of case placed on probation during the year 1956 in the North Wales combined probation area, namely 238, was the highest on record since the formation of the combined area, and the total number of persons remaining under supervision on December 31 was 385, which was an increase of 70 on the previous year.

The figures related to home inquiries are rather surprising. Under the heading "magistrates' courts" we find juveniles 394, adults 25. Can it be that the magistrates sitting in the adult courts do not consider that inquiries and reports by probation

officers assist them ? The figures for Assizes and quarter sessions were juveniles 11, adults 23, so evidently those courts make use of such reports.

Mr. N. W. Hutchings, principal probation officer, makes the familiar statement that most of the matrimonial cases come to the probation officers direct and, like other officers, he is able to say that care is exercised in reminding the applicants, as well as those who come from social agencies, etc., of their right of access to the courts at any time.

Although the percentage of cases completed satisfactorily is not quite as high as many other reports show, this fact may be due in part to the setting of a high standard of success. It is to be noted that the average of satisfactory cases for the period 1947 to 1956 (10 years) is 81.5 *per cent.*

The remand home for this area is at Chepstow, and while Mr. Hutchings has high praise for the good work done there he calls attention again to the difficulty of its situation in relation to the North Wales area, especially Anglesey and the Lleyn Peninsula.

MANCHESTER WEIGHTS AND MEASURES DEPARTMENT

Mr. J. R. Roberts, chief inspector for the city of Manchester, in his report for 1956, deplores the continued delay in the introduction of a new Weights and Measures Bill. He says that our law is hopelessly out of date and lagging woefully behind modern practices and developments in trade and industry. He considers it regrettable that there are many trade transactions, commodities and measuring appliances which are still not subject to weights and measures supervision.

Fuel, both liquid and solid, is now so expensive that inspectors of weights and measures are more than ever anxious to prevent irregularities and frauds. It is here pointed out that today petrol costs the motorist approximately ¼*d.* per fluid ounce, and it is obvious that frequent inspection of petrol pumps is desirable. There has been a gratifying reduction in the number of prosecutions for short weight coal, but a considerable number of complaints from purchasers have continued. The report emphasizes the need to inform the inspector without delay when there is suspicion of fraud. Particulars of some prosecutions relating to coal and coke show that some of these involve deliberate fraud.

In Mr. Roberts' opinion there are, in spite of the control of many kinds of food stuffs, many glaring omissions from any form of weights and measures control, and he gives instances of such articles. There are, he considers, far too many instances of sale by bag, packet or bottle without there being any indication of the quantity in the container. Many of the containers give quite a false impression of the quantity. Cartons, bottles and jars have been examined which had substantially recessed bases which could not have been for any other purpose than that of creating an exaggerated idea of the size of the pack.

An unusual prosecution under the Manchester Corporation Act, 1954, concerned the widths and lengths of bed sheets. As a result of information, an inspector visited a warehouse and measured some bed sheets labelled " 80 X 100 ". Deficiencies in length were found varying from 3½ *in.* to 15 *in.*, and in width of 15 *in.* The firm were fined £1 on each of six summonses.

A florist was prosecuted under the Merchandise Marks Act, 1887, for selling bulb fibre and water to which the description of bulb fibre was applied. A test purchase was made, the weight being 4 *lb.* 3½ *oz.* It was wringing wet and by the date of the hearing of the case the bulb fibre itself weighed only 1 *lb.* 10½ *oz.* Dry bulb fibre was on display in the shop, but sales were made from a box kept outside the premises. The shopkeeper and an assistant were each fined £5.

CITY OF PLYMOUTH: CHIEF CONSTABLE'S REPORT FOR 1956

The number of indictable crimes known to the police is the second highest in the past seven years. The total was 3,280, compared with 2,952 in 1955, and 3,461 in 1952. It is pointed out that the greater part of the increase is in minor types of crime, and this fact is indicated by the figure for the overall value of property stolen, which was the lowest during the past 11 years. The chief constable states that petty thieving seems definitely to be on the increase, one of the greatest problems for the police being to prevent thefts from automatic machines and meters. He points out that " so many of these well-filled money boxes are in easy reach in passageways and on landings of flats and the poorer type of house property let off in rooms, where so often the street door is left open not only by day but also by night, and it is a simple matter for a thief to attack property of this nature." It is also a crime which is not easily detected, but the chief constable records that in spite of this the detection figure for such offences during 1956 was 36 *per cent.*

There were 169 taking and driving away offences, 40 fewer than in 1955, but still far too many. All the vehicles concerned were recovered, but only 40 *per cent.* of offenders could be detected, a fact which is not surprising when one considers how easy it is for the offender to abandon the vehicle at the end of his unlawful journey without leaving any trace as to his identity.

Three thousand three hundred and forty-three persons, 555 more than in 1955, were dealt with by police for non-indictable offences. In addition there were 7,791 verbal warnings given to motorists and others who were alleged to have committed minor offences. This is a large figure, but it is fewer by 3,000 than that for 1955. The chief constable thinks that this may be due to people paying heed to such warnings and being more careful not to offend again.

The special constables are thanked for the great assistance given to the regular force on various special occasions when extra police were necessary. The hope is expressed that it may be possible to increase their numbers to at least 120 by the end of 1957 compared with a total of 109 on December 31, 1956. There is no authorized establishment.

In order to deal with police problems arising from the rapid extension of the city in the northern area the chief constable hopes to equip two of the beat motor-cycles with wireless. In the outlying estates there are few telephone kiosks and for rapid communications the police officer in the area can rely only on very high frequency wireless.

Road accident figures show an increase of 67 over those for 1955, the total for 1956 being 2,707. These included 19 fatal accidents and 1,009 others involving injury to 1,195 persons.

The force increased its actual strength by 16 during the year, finishing with a total of 357, only four less than the authorized establishment of 361.

CAMBRIDGE PROBATION REPORT

This is the first annual report dealing with the work of both the city and the county of Cambridge. It has given Mr. W. B. Gaskell, the senior probation officer, the opportunity to make some comparisons between town and rural life in relation to the incidence of crime. He writes:

" Although both areas have approximately equal populations, the statistical tables reveal that there are twice as many cases in the city as compared with the county, and this is a reflexion of the difference between an urban and a rural area. Undoubtedly a city offers more opportunity for those who are tempted to commit offences against property ; there is a greater tendency for youngsters to associate in groups or gangs and there is a migrant population often of uncertain character, in the men's, boys' and girls' hostels. Yet the frequent complaint that there is nothing to amuse the children can scarcely apply in Cambridge for there are youth clubs and societies which cater for all kinds, whereas some of the rural areas are sadly ill-equipped in this respect for the needs of the younger generation."

Mr. Gaskell thinks the difference may be due to the fact that family and community life holds stronger ties in country districts, and that fewer people look upon their homes as mere parking and filling stations. There is the all too common reference to parents who have little idea where their children are or what they are doing until there is trouble, and this is found to apply particularly to the 15–18 age group. The period between the time when a boy leaves school and when he does his national service is too often a period of restlessness, high wages and extravagant spending. Fortunately, national service sometimes counteracts the earlier lack of discipline. As to the girls, over one third of the women probation officers' cases in the city are teenagers found to be in need of care or protection or beyond control. Only one case from the county comes within this category.

The same contrast is found between town and country in the results of probation.

Of the completed orders, 15 out of 68 (22 *per cent.*) in the city were deemed unsatisfactory, but county figures were much more gratifying, there being only three unsatisfactory out of 33 completions (nine *per cent.*).

On matrimonial work, the report states that care is always taken never to deny any person's right to take the matter to court, but it is suggested that the wife who does so and cannot afford legal assistance may be at a disadvantage. It is a pity that it has not yet been found possible to implement the Legal Aid and Advice Act in this class of case.

The number of social reports from the courts has increased. Their number is greatly in excess of the new probation orders made. This, comments Mr. Gaskell, indicates, as it should, that the call for a probation officer's report is not merely a preliminary to the making of a probation order. He goes on to explain what, in his opinion, should be the aim and the content of such reports, in order to give the court an objective picture which may assist them in making their decision.

PERSONALIA

APPOINTMENTS

Mr. Gerald Cohen has been appointed whole-time clerk to the justices for the petty sessional division of Hartlepool and Castle Eden, Co. Durham. Mr. Cohen was called to the bar in November, 1950, and was a member of the North-Eastern circuit. Prior to this he was an architect with Sunderland corporation. In September, 1956, he accepted a legal post with Camberwell metropolitan borough council and is leaving this post to take up his new appointment on July 1, next. Mr. Cohen is 34 years of age.

Mr. T. Curtis, M.A., LL.B., assistant solicitor to the metropolitan borough of Lewisham, has been appointed conveyancing assistant solicitor in the department of the town clerk of Croydon county borough, Mr. E. Taberner. Mr. Curtis will take up his new duties with effect from September 2, next. In this post Mr. Curtis will succeed Mr. L. L. Gosney who has been in the service of the corporation for 37 years and who will retire on September 5, next. Mr. Gosney is at present clerk of the peace, but he will also retire from this office in September and Mr. Morgan, assistant solicitor in the town clerk's department and deputy clerk of the peace, will become senior assistant solicitor and clerk of the peace from September 15, next, when Mr. Gosney retires.

Mr. Anthony Johnson has been appointed assistant solicitor to Torquay, Devon, borough council and began his new duties on June 1, last. Mr. Johnson enters local government from private practice.

Mr. T. P. Trees, at present an assistant solicitor with the firm of Messrs. F. O. S. Leak, Burgess and Battersby, Manchester, has been appointed to the post of assistant solicitor to Rawtenstall, Lancashire, borough council. Mr. Trees was admitted in June, 1952.

Mr. G. H. Stockdale has been appointed legal assistant to Whitley Bay, Northumberland, borough council. Mr. Stockdale has been conveyancing clerk and before that committee clerk, with the county borough of Tynemouth, for the past eight years. He is to take up his duties with Whitley Bay borough council on July 1, next.

OBITUARY

We announce with regret the death at the age of 78 of His Honour Aubrey Ralph Thomas who was Assistant Judge of the Mayors' and City of London Court from 1936 to 1954. Between 1932 and 1937 he had been recorder of Gloucester. The late Judge came of a legal family, being the son of the late Ralph Thomas, solicitor, and a grandson of Serjeant Ralph Thomas. He was educated at Oxford and took second class honours in the B.C.L. examination in 1902. The same year he was called by the Middle Temple and soon acquired a good practice on the Oxford circuit. In World War I he interrupted his career and served on the instructional staff of the School of Musketry between 1916 and 1918. In later years he maintained his Service interests as hon. junior counsel to the Officers' Association (1928–1936). In 1932 he succeeded the late Mr. Vachell, Q.C., as recorder of Gloucester and two years later he became a bencher of the Middle Temple. In 1936 the recorder of London (Sir Holman Gregory) appointed him Assistant Judge of the Mayors' and City of London Court in place of Judge Shewell Cooper, and he proved a success in this important legal post in the City. His Honour married in 1913 Beatrice, younger daughter of the late Richard Porter, but there were no children of the marriage.

Mr. Moss Turner-Samuels, Q.C., has died at the age of 66. Mr. Turner-Samuels was admitted in 1914 and served during the First World War with the R.A.S.C. In 1922 he was called to the bar by the Middle Temple. He took silk in 1946 and became recorder of Halifax in 1948.

Major John Alexander Weir Johnston, Q.C., has died at the age of 77. He was called to the Irish bar in 1903 and practised for some years on the North-West circuit of Ireland. During the First World War, Major Johnstone served with the R.A.O.C. In 1919 he was called to the English bar by the Inner Temple and took silk (Northern Ireland) in 1923. In England Major Johnston practised on the South-East circuit.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, June 4

NATIONAL INSURANCE BILL—read 3a.

Thursday, June 6

OCCUPIERS' LIABILITY BILL—read 3a.

NEW STREETS ACT, 1951 (AMENDMENT) BILL—read 3a.

CHEQUES BILL—read 2a.

HOUSE OF COMMONS

Thursday, June 6

NATIONAL HEALTH SERVICE CONTRIBUTIONS BILL—read 3a.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The composition of the Departmental Committee on Proceedings before Examining Justices has been announced in the Commons by the Secretary of State for the Home Department, Mr. R. A. Butler. He has appointed the following to be members of the committee under the chairmanship of Lord Tucker:

Lady Adrian; Mr. Norman G. Fisher; Mr. T. Mervyn Jones; Mr. F. H. Lawton, Q.C.; Sir Sydney Littlewood; Lord Merthyr, T.D.; Miss J. J. Nunn; Mr. J. C. Rodgers, M.P.; Mr. L. P. Scott; Mr. David Weitzman, Q.C. M.P.; Mr. J. P. Wilson.

He added that in consultation with the chairman he had amended the terms of reference, which are now as follows:

"To consider whether proceedings before examining justices should continue to take place in open court and, if so, whether it is necessary or desirable that any restriction should be placed on the publication of reports of such proceedings; and to report."

MAINTENANCE AND AFFILIATION ORDERS

Miss J. Vickers (Cons., Devonport) asked the Secretary of State for the Home Department whether he was aware of the hardship caused to women who were prevented from obtaining or enforcing maintenance or affiliation orders because they were unable to obtain the man's address; and if he would consider whether arrangements could be made for such an address which was known to a Government Department to be made available to the woman or the court.

Mr. Butler replied that the Government had been giving careful and sympathetic consideration to that question and it had been decided to permit the disclosure of addresses from certain official records subject to a number of necessary safeguards.

Where the address was required for the purpose of taking proceedings in the High Court either to obtain or to enforce a maintenance order the information would be supplied on application to the Registrar of the court, who would pass it on to the wife's solicitor or to the woman herself, if she was acting without a solicitor. In that type of case also the information would be given only on the understanding that it would be used solely for the purpose of the proceedings and that every reasonable effort had been made to trace the man by other means.

Statutory authority was not necessary to permit disclosure and the new procedure would operate at once. The tracing of the addresses would, however, involve a small additional expenditure and the Government would take an early opportunity to introduce legislation.

VAGARIES OF THE WAYWARD

Eccentricity may show itself in the commission of offences no less than in the daily round of a dull and blameless life; and it is always refreshing, both for those who preside and those who practise in the courts, to come across a case which is a little out of the ordinary. This is particularly so in courts of summary jurisdiction, where the routine catalogue of motoring offences, charges of drunkenness and petty pilfering, and complaints of domestic discord, is rarely lightened by any spot of colour, seldom varied by any touch of the picturesque.

Some day, perhaps, somebody will compile an anthology of cases selected on a new principle—not because they illustrate or enunciate some basic point of law, but for the light they throw upon the infinite gradations of human ingenuity or the perversity of human conduct. Pending the arrival upon the legal scene of a new master of paradox in the Chestertonian manner, we can but cull some variegated blossoms from the pages of the daily press.

What is the converse of "taking evasive action"? We cannot frame a suitable definition, but a practical illustration has been provided by a Manchester man who appeared for two minutes on an I.T.V. programme in the *rôle* of a police sergeant. He was immediately recognized by a "looker-in" who happened to have been a victim of his recent frauds: within a matter of hours he was in custody, and is now serving a sentence for obtaining goods and money by false pretences. This is definitely the exception that proves the rule that it pays to advertise.

A variation on "the biter bit" theme is reported from Hutton, Essex. A house there was broken into; police were soon on the scene, and an Alsatian tracker-dog, with the sergeant in charge, gave chase to a man seen running into a wood. The faithful animal, a veteran of many exploits, zealous to act upon her own initiative, rapidly outdistanced the sergeant and continued the chase alone. Either her zeal outran her discretion or she fell a victim to the magnetic personality of the malefactor, for nothing more was seen of pursuer or pursued for many hours. Late the same night, 15 miles away in East Ham, a man in company with an Alsatian was observed hiding in a garden. A detective went to the spot; the man had disappeared, but the dog was found, exhausted, and unfortunately unable to give a coherent account of her adventures. The Alsatian bears the name of Senta, the heroine of Wagner's opera *The Flying Dutchman*, who was lured away from home by her phantom lover to board his phantom ship, and never seen again by mortal eye. The phantom housebreaker of Hutton, at the time of writing, is still at large.

This intrusion of psychic factors into the everyday work of the police leads naturally to the record of a case at Chatham juvenile court. A boy of nine, charged with stealing a bicycle, explained that he had taken the machine so as to be in time to keep an appointment with the psychiatrist who was giving him treatment. This episode should provide scope for some useful research into examples of word-association, on the Jungian principle, between practitioner and patient. Some confusion there must have been, in the mind of a nine year old, between cycling and psychology; but whether this constitutes a mistake of law or of fact has not been decided.

Bacon has observed that "there is a superstition in avoiding superstition," and Chesterton's Father Brown has pointed the moral in *The Adventure of the Thirteen Club*. Two recent cases from the north of England have illustrated the dangers attendant upon a defiance of the popular notion that Friday is an unlucky day. At Durham City a man, fined for being drunk and disorderly, remarked to the Bench: "I just wait for Friday to go out and get 'blotto'. I deliberately go out to get drunk." The second case, at Middlesbrough quarter sessions, provides a more solemn warning. The accused was what might be called, in a Gilbertian sense, a man of regular habits. On three successive Fridays he broke into the same house; on the first two occasions he got away with some clothes, but the third time the police were waiting for him. In the housebreaker's no less than in other professions there seems to be a need for some "staggering" scheme, though perhaps it would be supererogatory to those who practise habitual intoxication.

Quick-witted repartee from the man in the charge-room or the dock usually produces laughter in court, though it is not necessarily an apt means of mitigating severity on the bench. A man charged at Liverpool magistrates' court with stealing shrubs from a garden had told the police, when they saw him carrying them at 1.15 *a.m.*, "I got them from the Garden of Eden." This playful reference to the source of all original sin did not help to excuse his conduct or to mitigate the penalty.

At Stockport, Cheshire, a defendant accused of being drunk in charge of a car drew a careful distinction between the two constituents of the alleged offence. "I *was* drunk," he admitted, "so drunk that I did not know whether it was daylight or not. But I was *not* in charge of the car." His explanation—that he had asked another man to drive because he felt himself unfit to do so—was corroborated by the man in question, as was also the fact that, when the police saw him, the accused was alone in the passenger-seat. This evidence secured his acquittal, but not before he had shown himself a stickler for accuracy on another detail of the *res gestae*. The police sergeant told the bench that, while he was writing out the charge at the police station, "the accused kissed him on the right cheek." This allegation elicited a pained protest from the dock: "Not *you*, Sergeant," cried the accused in shocked tones; "I admit kissing the constable. but definitely not you!" A man who, at such a time, and in such a state as he himself described, remains conscious of nice distinctions of behaviour towards members of the police hierarchy, ought not to be described, brutally and coarsely, as "drunk". He is doing much to uphold a standard of etiquette and civilized manners, and should be treated with becoming respect.

A.L.P.

CORRECTION

Re the article at p. 259, *ante*, commenting upon the case of *R.* v. *Havant Justices, ex parte* Jacobs [1957] 2 All E.R. 476, and the Weekly Note at p. 197, it has been pointed out to us that the reference to St. Barbara's Approved School should have been to St. Barbara's Approved Probation Home.

NOTED IN PASSING

". . . and then there was a fairly elaborate covenant against users of a particular kind as 'for a madhouse, billiard room, or public concert, music or ballroom, shooting gallery, or as or for a brothel, or as for a foundry, hospital, infirmary,' and there are set out various and other types of use and occupation which were barred. That undoubtedly left it quite free for the tenant to use the premises in any other way he liked, and he was given a very large realm of choice."

(Evershed, L.J., now Lord Evershed, M.R., in *Wolfe* v. *Hogan* [1949] 2 K.B. 194 at p. 201.)

per J. P. C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Order made under the Adoption of Children Act,* 1926—*Intestacy of natural parent.*

X was the lawful and only son of A and B. On April 24, 1945, an adoption order was made in respect of X, he then being a person of 19 years of age, the adopting parties being C and D. B (the natural mother) died some years ago and C (the father by adoption) also died some years ago.

A has just died intestate.

X has recently applied to the Probate Registry to take out grant of Letters of Administration to A's estate, but has been informed that owing to the provisions of the Adoption Act of 1950 he cannot do so.

Under s. 5 (2) of the Adoption Act of 1926, X would have been entitled under A's intestacy to his estate, but the whole Act of 1926 (except subs. 3 and 4 of s. 5 and s. 10) have been repealed. Your opinion is asked as to whether—through the operation of the Act of 1950, X has been deprived of all benefit arising out of the intestacy.

When the adoption order was made valuable rights were preserved in favour of X on the intestacy of A and it would appear that such rights were taken away under the 1950 Act unless this Act only relates to adoption orders made subsequent to the Act coming into operation.

R. DEE.

Answer.

The law as to the treatment of adopted persons for the purposes of intestacies was drastically changed by s. 9 of the Adoption of Children Act, 1949, which was repealed and re-enacted in s. 13 of the Adoption Act, 1950, by virtue of which where any person dies intestate his property devolves as if the adopted person were the child of the adopter, and were not the child of any other person.

By para. 4 of sch. 5 to the latter Act, s. 13, *ibid.*, applies to an adoption order made under the Adoption of Children Act, 1926, as if it were an adoption order under the 1950 Act. The proviso to that paragraph does not apply in this case as this is the intestacy of a person who died after January 1, 1950.

In our opinion, X is not entitled to any benefit arising out of the intestacy of his natural father.

2.—Bastardy—*Application under National Assistance Act,* 1948, *s.* 44—*Mother of child dead.*

In 1953 Miss A gave birth to an illegitimate child and died in childbirth. The child was cared for by Miss A's mother and a voluntary allotment was made by the alleged father, B, to the grandmother, until some months ago. At that time National Assistance was granted to the grandmother for the requirements of the illegitimate child and the National Assistance Board are now desirous of applying for an order on B under s. 44 of the National Assistance Act, 1948.

Section 44 (3) of the 1948 Act requires that the court shall hear such evidence as the Board may produce "*in addition to that required to be heard by s.* 4 *of the Bastardy Laws Amendment Act,* 1872."

As you are aware, s. 4 of the 1872 Act requires the justices to hear the evidence of the woman concerned and in *R.* v. *Armitage* (1872) L.R. 7 Q.B. 773, it is held that no order could be made if the woman died before the hearing.

I have advised that in spite of the judgment of Lynskey, J., in the recent case *National Assistance Board* v. *Tugby,* the court will be precluded from making an order under s. 44 of the 1948 Act unless the woman concerned gives evidence. As Miss A is dead, no order can, therefore, be made.

In your opinion, is my view correct?

HIDING.

Answer.

We agree with our correspondent, and would add that s. 51 (4) of the Magistrates' Courts Act, 1952, seems to make it clear that the evidence of the mother is always required. An even more valid objection to an application by the Board in this case seems to lie in the wording of s. 44 (2) of the National Assistance Act, 1948, which provides that the Board may "make application to a court of summary jurisdiction having jurisdiction in the place where the mother of the child resides for a summons . . ." This clearly presupposes that when any such application is made, the mother must be alive.

3.—Children and Young Persons—*Care or protection proceedings —Venue.*

If there is a good practical reason, *e.g.,* an objection on the ground of bias or prejudice, for care or protection proceedings being transferred from one juvenile court to another can those proceedings lawfully be heard in an adjoining division of a county?

Section 101 of the Children and Young Persons Act, 1933, provides that, subject to the provisions of that Act, all orders thereunder shall be made and all proceedings taken in manner provided by the Magistrates' Courts Act.

The 1933 Act does not make any provision about venue.

Venue under the Magistrates' Courts Act, 1952, depends on whether the proceedings are criminal or civil. It seems impossible to say "care or protection" proceedings are criminal and therefore the jurisdiction is confined, under s. 44, to anything done or left undone within the petty sessions area or which ought to have been done there or elsewhere or relates to any other matter arising within that area.

If s. 44 governs the question it may well be that two petty sessions areas have jurisdiction, if for instance a child has run away from home or, living in X division, had had a sch. 1 offence committed against him or her in Y division, but, apart from such cases do you agree that only the court for the area generally where the juvenile lives has jurisdiction?

If you agree it seems that there is no easy way out of the difficulty. Justices for the same county who normally act in, and are on the juvenile court panel for, an adjoining division cannot come in because they are not on the juvenile court panel for that particular division. They could be elected, but that takes time.

M. ALWIN.

Answer.

We agree that these are civil proceedings and that jurisdiction to hear them is limited, by s. 44 of the Magistrates' Courts Act, 1952, to the juvenile court acting for the petty sessions area within which the matter of complaint wholly or partly arose.

4.—Contract—*Variation of prices—Contractor's discount discontinued.*

A local authority contracted to purchase from a supplier several thousand pounds' worth of sanitary fittings. The contract contains the following clause:

"In the event of any increase or decrease in the prices of materials as paid by the contractor above or below those on which his tender was based, the authority will, in the case of increase, be prepared to reimburse the contractor for such extra expenditure on the production of certified invoices showing the nett extra charges to the contractor, but no extra payment will be made as contractor's profit; and correspondingly, if prices decrease, then the authority shall be given the advantage of such reduction in the prices of materials."

The manufacturers from whom the supplier proposed to obtain and did in fact obtain the fittings decided, after the date of the tender, to discontinue certain discounts which they had as a regular practice allowed to the supplier. He based his tender on the assumption that the discounts which he had previously received would continue. Does this reduction in discount constitute an increase in price within the above-mentioned clause? The words "as paid by the contractor" and "nett" in the clause seem particularly in point.

DEWCAS.

Answer.

Yes, in our opinion.

5.—Fines—*Dog Licences Act,* 1867, *s.* 8—*Application of penalties.*

With reference to P.P. 2 at 120 J.P.N. 124 in which you appear to agree with the contributor, I should be glad of your valued opinion whether the position is not affected by s. 287 of the Customs and Excise Act, 1952, and the schedule to the Transferred Excise Duties (Application of Enactments) Order, 1952. The relevant part in the schedule is "s. 287 so, however, as not to prejudice the operation of s. 27 of the Justices of the Peace Act, 1949." Is not the effect of this to make the whole penalty under the Dog Licences Act, 1867, payable to the Secretary of State under s. 27 (1), Justices of the Peace Act, 1949? I note that in p. 763, *Stone,* 1956 (Vol. I) there is a statement to this effect.

J. DOGGED.

Answer.

We are much obliged to our correspondent for re-opening this rather difficult question. Although we think that the inclusion of s. 287 in the schedule to the 1952 order is in a way misleading we are now of the opinion that the addition of the reference to s. 27 of the 1949 Act must have the effect of making all penalties recovered in magistrates' courts in these cases payable to the Secretary of State, no matter who prosecutes.

6.—Master and Servant—*Truck Acts*, 1831 *to* 1940—*Supply of boots.*

Practical Point 7 on p. 76, *ante*, relates to the supply of boots by an employer in return for a deduction of 6*d*. per week from the wages of workmen. You refer to the case of *Pratt* v. *Cook, Son & Co.* [1940] 1 All E.R. 410; 104 J.P.N. 135, but have you consulted the rest of the Truck Acts other than s. 23 of the Truck Act, 1831, and the Truck Act, 1940? Is it to be assumed that s. 3 of the Truck Act, 1896, because of its heading "Deduction or payment in respect of materials," is not wide enough to include the supply of boots in spite of the use of the words "or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the workmen"? I should have thought that, in view of the passing of the 1940 Act in particular, it would be safe to assume that Dilly's problem could, with reasonable safety, be dealt with by operating the requirements of s. 3 of the 1896 Act.

CLOPIN.

Answer.

Section 3 of the Truck Act, 1896, names several objects which do not seem to be all of the same kind, so that the word "things" might apply to protective clothing, even if the word "materials" did not: the heading does not fully cover the enactment. The section seemed to us, however, to be unhelpful because it is entirely concerned with a contract between an individual employer and an individual workman. As we read the question at p. 76, *ante*, the agreement would be made between an organization representing employers and an organization representing the workmen. The council could require new employees to enter into a contract satisfying the Act of 1896, but the former query related to existing staff. The existing workman would enjoy the benefit but, not having entered into an oral or written contract with his own employer, he would be entitled to repudiate the agreement at any time and to claim past wages. This was what the man did in *Pratt's* case, where it was s. 23 of the Act which was in question. The Act of 1940 was passed hastily to prevent others from doing the same, but it did not apply to agreements made afterwards, or to the requirements of s. 3 of the Act of 1896.

7.—Public Health (Drainage of Trade Premises) Act, 1937—*Bye-laws—Power to offset existing discharges.*

A question has arisen as to the effect of s. 1 of the Public Health (Drainage of Trade Premises) Act, 1937. A trade effluent is discharged into a public sewer, following a trade effluent notice which was duly served and in respect of which no objection was raised by the local authority, nor was any consent specifically given. This discharge has continued for years; the question is whether the body which discharges the trade effluent is now entitled to do so in perpetuity, or whether its right to do so might be limited or altered by byelaws passed now by the local authority which is the owner of the sewer. The consent of the local authority is expressed by s. 1 (1) and again by s. 2 (3) of the Public Health (Drainage of Trade Premises) Act, 1937, to be subject to the provisions of any byelaws under that Act which are for the time being in force. Does this mean the byelaws which happen to be in force at the time of such consent (or the expiration of the period after the trade effluent notice) or does it mean the byelaws which may from time to time thereafter be in force?

The two opposing views which we have considered are:

1. That if consent has been obtained and a factory possibly built as a result, it should not be possible for the local authority by passing a byelaw to make it virtually impossible for the factory to carry on;

2. That it does not seem reasonable that it should be impossible for the local authority to amend the terms of a consent at any time, short of an Act of Parliament, even though, owing to changed circumstances, they may consider it to be in the public interest that these terms should be amended.

We have looked up the phrase "for the time being" in such text books as are available and it appears to have given both meanings at different times.

CONOM.

Answer.

In their context in s. 1 of the Act the words must, in our opinion, refer to the byelaws in force at the time of the discharge. It would be inconsistent with the purposes of the Act to stabilize the position as at the time of consent. The trader has a right of appeal under s. 3 against refusal of consent or conditions of consent; he also has a right under s. 250 of the Local Government Act, 1933, to object to any proposed byelaws.

8.—Road Traffic Acts—*Reporting accident—Damage to load on vehicle but none to vehicle—Obligation to report.*

A was driving a goods vehicle loaded with an overhanging load covered by a tarpaulin sheet. B's van passed him and struck and tore the tarpaulin sheet and broke off a tap and pipe from the load, which was a casting. B's van was damaged. A's lorry was not touched, but only the load was damaged as above stated.

B was charged with an offence under s. 22 of the Road Traffic Act, 1930, as amended by the Act of 1956 for failing to stop when an accident had occured whereby damage was caused to a vehicle.

The magistrates decided that an accident had occured and that B knew about it, but the only damage was to the load. The submission was made by the defence that this was not damage to a vehicle. The magistrates upheld the submission and dismissed the case.

Were they correct? Will you please give an authority if possible. Considering the Road Traffic Acts and the regulations made thereunder and the Road Transport Lighting Acts, it does seem that the vehicle and the load are treated as separate and distinct.

MARON.

Answer.

We can find no authority on the point and we consider that the decision of the magistrates was correct. The provision is a penal one and must be construed strictly. We do not think that it can be said that in s. 22 of the 1930 Act as amended, "vehicle" should be read as including the load on a vehicle.

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